

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GREAT WESTERN INSURANCE COMPANY,

Plaintiff,

v.

MARK GRAHAM, et. al.,

Defendants.

No. 18 CV 6249 (VSB)

**THE SRC DEFENDANTS’
NOTICE OF MOTION TO
DISMISS COUNTS TWO
THROUGH EIGHT AND
ELEVEN OF THE SECOND
AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Michael S. Gordon, dated February 5, 2019, in Support of the SRC Defendants’ Motion to Dismiss the Second Amended Complaint of plaintiff, Great Western Insurance Company, dated December 19, 2018 (Dkt. No. 106, the “SAC”), and the associated exhibits attached thereto; the Memorandum of Law in Support of the SRC Defendants’ Motion to Dismiss Counts Two Through Eight and Eleven of the SAC submitted herewith; and upon all the papers and proceedings heretofore had herein, defendants Donald Solow (“Mr. Solow”); Regatta Holdings, LLC (“Regatta”); Cygnet 001 Master Trust (the “Cygnet Master Trust”); Cygnet 001 Master Trust Series 2011-A (“Series 2011-A”); Cygnet 001 Master Trust Series 2011-C (“Series 2011-C”); and Cygnet 001 Master Trust Series 2013-A (“Series 2013-A”) (the Cygnet Master Trust and Series 2011-A, 2011-C and 2013-A are referred to as the “Cygnet Entities,” and Mr. Solow, Regatta and the Cygnet Entities collectively are referred to as the “SRC Defendants”) will move this Court before the Honorable Vernon S. Broderick, located in Room 518, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, at a date and time to be directed by the Court, for an Order, pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), as well as the Private Securities Litigation Reform Act of 1995, 18 U.S.C. § 1964(c), granting the SRC Defendants’ motion to dismiss with prejudice the following claims in the SAC:

- (i) Count Two for Aiding and Abetting Breach of Fiduciary Duty, as against the SRC Defendants;
- (ii) Count Three for Fraud, as against Mr. Solow and Regatta;
- (iii) Count Four for Aiding and Abetting Fraud, as against the Cygnet Entities;
- (iv) Count Five for Violation of the Racketeer Influenced Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c), as against Mr. Solow and Regatta;
- (v) Count Six for Violation of RICO, 18 U.S.C. § 1962(a), as against Mr. Solow and Regatta;
- (vi) Count Seven for Violation of RICO, 18 U.S.C. 1962(d), as against the SRC Defendants;
- (vii) Count Eight for Civil Conspiracy to Commit Fraud, as against the SRC Defendants;
- and
- (viii) Count Eleven for Unjust Enrichment, as against the SRC Defendants.

Date: February 5, 2019
New York, New York

Respectfully submitted,

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A, Cygnet 001 Master Trust Series 2011-C,
and Cygnet 001 Master Trust Series 2013-A*